

KAC

Mailed October 1, 2002

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Annual Reports for the Year Ended December 31, 2001, Filed by
Commercial Mobile Radio Service Providers on a Confidential Basis

RE: PSC Control Nos. 17916, 19204, 19205, 19206, 23598, and 23599

CONFIDENTIALITY DETERMINATION

On April 1, 2002, AT&T Wireless Services of Minnesota, Inc. ("AT&T Wireless") (entity 266) submitted written applications seeking confidential treatment of certain information in its 2001 Commercial Mobile Radio Service Provider ("CMR") annual report. The information is filed under document PSC control numbers 23598 and 23599.

On April 4, 2002, SprintCom, Inc. (entity 5665) and Sprint Spectrum L.P. (entity 7146) (collectively "Sprint PCS Companies") submitted written applications seeking confidential treatment of certain information in their 2001 CMR annual reports. The information is filed under document PSC control numbers 19204 and 19205, and 17916 and 19206, respectively.

In particular, all three companies seek confidential treatment for the Wisconsin Gross Intrastate Operating Telecommunications Service Revenue information on page 6 of their respective 2001 CMR annual reports. For the reasons stated herein, confidential treatment for the above specifically identified data is **denied**.

The Public Service Commission ("Commission") has the authority to compel the submittal of this information pursuant to Wis. Stat. §§ 196.202 and 196.218 and Wis. Admin. Code ch. PSC 160. This confidentiality determination is made pursuant to Wis. Admin. Code

2001 CMR Annual Report Confidentiality Determination

§ PSC 2.12, and the Commission's November 21, 2000, Order delegating responsibilities for confidential determinations to Division Administrators and/or to the Administrative Law Judge.

Background

On May 30, 2001, the Commission issued a Confidentiality Determination¹ concerning the 2000 CMR annual report filings.² In its consolidated confidentiality determination dated March 14, 2002, the Commission found it reasonable to apply those findings of its Confidentiality Determination to 2001 annual report filings.

AT&T Wireless and the Sprint PCS Companies are Commercial Mobile Radio Service Providers ("CMRSs") which are required to file a CMR annual report with the Commission. The statutory filing date for the CMR annual report covering 2001 calendar year operations was April 1, 2002; 60 CMRSs were required to file this report for the 2001 calendar year.³

For the 2001 CMR annual report program,⁴ which was released on February 15, 2002, the Commission implemented a paperless filing process. The 2001 CMR program did not contain padlocks allowing users to file selected information on a confidential basis by locking the padlock next to the protected data, consistent with the Commission's May 30, 2001, Confidentiality Determination. All 2001 CMR annual report filings were to be accomplished via

¹ On July 18, 2001, the Commission issued an Order Denying Reconsideration, Reopening, and Stay concerning this matter. Subsequent to the issuance of the Commission's July 18 order, one of the Commercial Mobile Radio Service Providers ("CMRSs") obtained a court-ordered stay permitting continued confidential treatment of selected portions of its 2000 filing.

² The 2001 CMR annual report replaces the CMRS Assessable Revenues Worksheet for Universal Service Fund Assessment Purposes formerly used for 2000 calendar year reporting and essentially requires information identical to that requested for the 2000 calendar year.

³ As of the date of this determination, 33 of the 60 CMRSs have actually filed the 2001 CMR annual report with the Commission.

⁴ The 2001 CMR annual report program is actually a subset of the 2001 Other Telecommunications Annual Report Program. The 2001 Other Telecommunications Annual Report Program is used by five different categories of telecommunications entities to file annual reports with the Commission.

2001 CMR Annual Report Confidentiality Determination

e-mail, with an encrypted, zipped attachment containing the exported 2001 annual report information, together with an export status report and edit check listing.

Discussion

On April 1 and 4, 2002, AT&T Wireless and the Sprint PCS Companies manually filed their 2001 CMR annual reports, requesting confidential treatment of the Wisconsin Gross Intrastate Operating Telecommunications Service Revenue information contained on the Assessable Revenues schedule on page 6, over and above that provided for in the 2001 CMR annual report program. The three companies' filings contained confidential hard copy pages, a confidential diskette containing annual report program files, and a complete public version of the 2001 report, the latter which is currently available on the Commission's web page.

In AT&T Wireless' notarized affidavits accompanying the filings, it states that the revenue information is confidential and proprietary and disclosure of the information would allow competitors to use it to their competitive advantage and to the detriment of the company. Specifically, the company posits that competitors could derive AT&T Wireless' market share, assess the relative efficacy of the company's marketing and strategic business plans in Wisconsin, gain insight into AT&T Wireless' economic and business planning information, and make changes to their own business and marketing plans based on an analysis of the company's confidentially-filed revenue information. AT&T Wireless also claims that the information constitutes trade secrets under Wisconsin law and should be protected from public disclosure pursuant to Wis. Stat. §§ 19.36(5), 134.90, and 196.14. The company notes that this revenue

2001 CMR Annual Report Confidentiality Determination

information is neither generally available to the public nor generally known outside the company. AT&T Wireless states that it maintains internal procedures to protect the information and requests confidential treatment in other regulatory filings.

The Sprint PCS Companies note that only internal company employees currently have knowledge of the requested confidential information, stating that absence of confidential handling by the Commission would significantly increase that number. The Sprint PCS Companies also claim that the value of the information to the companies and competitors is substantial, in that it would allow competitors to extrapolate average revenue per customer, profitability, and cost of providing service. The companies claim that competitors could, in turn, focus on a market area, creating an unfair commercial advantage and causing competition to suffer in the state. The companies also posit that because the information is collected only for the purpose of calculating intrastate universal service fund ("USF") billings, the information should not be subject to public inspection.

In issuing its March 14, 2002, consolidated confidentiality determination applying to all CMRSs, the Commission balanced the concerns of the parties submitting confidential commercial or financial information and that of the interest of the public in accessing that information. This careful balancing of competing interests affects both the competitive nature of the telecommunications industry and the performance of the Commission's public responsibilities. As the telecommunications industry becomes increasingly competitive, companies increasingly assert that the information they provide to the Commission is competitively sensitive.

2001 CMR Annual Report Confidentiality Determination

AT&T Wireless and the Sprint PCS Companies assert that the information provided, if released, would aid a competitor. However, it is difficult to reconcile confidential treatment of annual reports for these three companies with annual reports of the other 30 CMRSs that have not sought the same.

Confidential treatment of Wisconsin Gross Intrastate Operating Telecommunications Service Revenue information in the AT&T Wireless and Sprint PCS Companies' 2001 CMR annual reports is **denied**. Trade secret status for such information under Wis. Stat. §§ 19.36(5), 134.90(1)(c), and 196.14, as claimed by AT&T Wireless, is likewise **denied**.

The Commission reiterates the provisions and reasoning contained in its March 14, 2002, confidentiality determination concerning the 2001 CMR annual report, in which it denied provisional confidential treatment to all information in the to-be-filed 2001 CMR annual reports. Confidential treatment for this information was denied because this information would not aid a competitor of a public utility.

The Commission is not persuaded that the statewide revenue information cited by AT&T Wireless and the Sprint PCS Companies in their April 2002, filings warrant provisional confidential treatment. All three companies have failed to provide any specific, convincing evidence, beyond mere allegation, that disclosure of the information at issue truly enables competitors to harm their respective businesses. The Commission does not believe that the statewide intrastate revenue information at issue is specific enough to allow competitors to target

2001 CMR Annual Report Confidentiality Determination

strategic plans to certain market areas, as claimed by AT&T Wireless and the Sprint PCS Companies.⁵ The Commission is not convinced that the limited purpose for which the revenue information is collected should, in any way, influence the confidential treatment of the respective companies' revenues. Finally, the Commission does not believe that Wisconsin intrastate revenue qualifies as a trade secret under Wis. Stat. §§ 19.36(5) or 134.90(1)(c).

Pursuant to its jurisdiction under Wis. Stat. §§ 196.02(1), 196.14, and other provisions of Wis. Stat. ch. 196 and Wis. Stat. §§ 19.32-.39, as may be pertinent hereto, the Commission denies confidential treatment to the AT&T Wireless and Sprint PCS Companies' Wisconsin Gross Intrastate Operating Telecommunications Service Revenue information contained in their 2001 CMR annual reports.

This confidentiality determination is not a final determination under the Public Records law; it is the Commission's decision for purposes of managing its files. This confidentiality determination does not prejudice the right of any person to submit a public records request to inspect the contents of the filings subject to this determination.

The information for which confidential treatment is denied shall be open to public scrutiny 40 days after the issuance of this order. AT&T Wireless and the Sprint PCS Companies shall provide the Commission with a revised complete public version complying with this determination no later than three business days before the public disclosure date.⁶ Absent such

⁵ Additionally, the Commission notes that such revenue information at issue was similarly disallowed confidential treatment in its March 14, 2002, confidentiality determinations concerning the following 2001 annual reports: Interexchange Carriers and Other Selected Alternative Telecommunications Utility-Other Telecommunications Provider Entities ("ARW"); Alternative Telecommunications Utility-Other Telecommunications Provider ("OTH"); and Alternative Telecommunications Utility-Telecommunications Reseller ("RES"). The Commission is currently addressing requests from two ARW entities, 11 OTH entities, and three RES entities for confidential status for items contained in such annual reports.

⁶ In the alternative, any (or all) company(ies) may elect to satisfy these requirements by electronically re-filing its 2001 annual report using the electronic filing capabilities contained in the 2001 CMR annual report program.

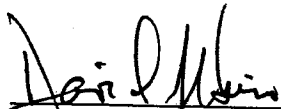
2001 CMR Annual Report Confidentiality Determination

filings, the Commission will proceed to make available revised public versions based on this confidentiality determination.

This order is effective upon mailing.

Dated at Madison, Wisconsin, 1 October 2002

For the Commission:



David Albino
Administrator
Telecommunications Division

DA:KHK:slg:srd:g:\Confidential Determinations\CMR 2001 Ann Rep 0902 Conf Deter